

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No. 02-02771
Chapter 11

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
AND AUTHORIZING SECURED CREDIT FROM SOUTHTRUST BANK**

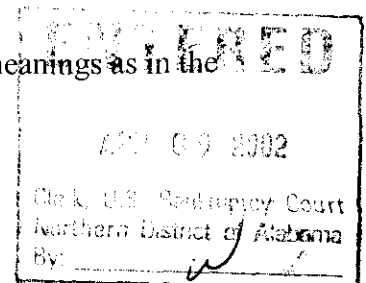
Upon the motion of the above-captioned debtor-in-possession (the "Debtor") for entry of an interim order authorizing the Debtor to use cash collateral and obtain secured credit from SouthTrust Bank (the "Motion"), and it appearing that the interim relief requested in the Motion is necessary prior to a final hearing on the Motion and is in the best interests of the Debtor's estate, its creditors and other parties in interest; and after due deliberation and cause appearing therefor,

The Court hereby finds:

A. The Court has jurisdiction over this case, and the parties and property affected by this Motion, pursuant to 22 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case and this Motion is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. On the Petition Date⁵, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code, and is continuing to operate its business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

⁵ Capitalized terms used in this Order and not defined shall have the same meanings as in the Motion.



C. Pursuant to 11 U.S.C. §§ 102(1) and 364(c) and Bankruptcy Rules 2002 and 4001, the Debtor has provided due and sufficient notice of the preliminary hearing on the Motion and its request for interim relief set forth in the Motion, and no further notice of the request for the relief granted in this Order is required. Such notice is appropriate, adequate and proper under the circumstances of this case as set forth herein, in the Motion and as presented to the Court.

D. In order to continue the ordinary course of operations of the business of the Debtor, it is necessary for the Debtor to use cash collateral and to borrow money and otherwise obtain secured credit from SouthTrust to provide working capital.

E. The Debtor is unable to obtain working capital financing allowable under 11 U.S.C. § 503(b)(1) as an administrative expense pursuant to 11 U.S.C. § 364(a) or 364(b). After considering all the alternatives, the Debtor has concluded, in the exercise of its reasonable business judgment, and has demonstrated to the Court that the DIP Loan Agreement (as defined in the Motion) represents the best working capital financing available under the circumstances.

F. Good cause has been shown for the immediate entry of this Order. Among other things, the ability of the Debtor to finance its operations and the availability of interim financing pursuant to this Order and the DIP Loan Agreement is vital. The preservation and maintenance of the going-concern value of the Debtor is important to the Debtor's successful reorganization pursuant to the provisions of Chapter 11 of the Bankruptcy Code and the Debtor's pre-packaged Plan. The terms of the borrowing authorized hereby are fair under the circumstances. Entry of this Order will be in the best interests of the Debtor, its estate and its creditors.

G. SouthTrust's interests in its collateral will be adequately protected in accordance with the terms of this Order and the DIP Loan Agreement.

Accordingly, it is hereby ORDERED, as follows:

1. The Debtor's Motion as it relates to interim approval of the DIP Loan Agreement shall be, and it hereby is, approved.

2. Good and sufficient notice of the Debtor's request for interim approval of the DIP Financing and the hearing thereon has been provided in accordance with, inter alia, 11 U.S.C. §§ 102(l) and 364(c) and Bankruptcy Rules 2002 and 4001, and any requirement for other and further notice shall be, and it hereby is, dispensed with and waived.

3. The relief granted by this Court pursuant to this Order is necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on the Motion.

4. An immediate need exists for the Debtor to use cash collateral and to obtain cash advances in order to continue the ordinary course operation of its business.

5. The Debtor is unable to obtain cash advances as unsecured credit allowable under 11 U.S.C. § 503(b)(1). Without the availability of the DIP Loan Agreement, the Debtor's ability to preserve the going-concern value of its business will be quickly eroded. The preservation and maintenance of the going-concern value of the Debtor is important to the successful reorganization of the Debtor pursuant to the provisions of Chapter 11 of the Bankruptcy Code and the Debtor's pre-packaged Plan.

6. As set forth in the Motion and based upon the record of these proceedings, the Court finds that the terms of the interim financing requested in the Motion have been negotiated in good faith between the Debtor and SouthTrust, and any credit extended by SouthTrust pursuant to the terms of this Order shall be, and it hereby is, deemed to have been extended in good faith (as that term is used in 11 U.S.C. § 364(e)).

7. The Debtor will have the ability to use cash collateral and to receive post-petition

loans and/or advances and credit and will thereby benefit from the DIP Loan Agreement authorized by this Order.

8. The Debtor is immediately authorized to borrow or obtain cash advances up to the aggregate principal amount of \$2,800,000 outstanding at any one time pursuant to the terms of the DIP Loan Agreement, which authorization is without prejudice to the Debtor's request for authorization at the final hearing on the Motion to borrow funds in such amounts as are permissible under the DIP Loan Agreement, which DIP Loan Agreement is hereby approved.

9. The Debtor and SouthTrust are authorized and directed to do and perform all actions, to make, execute and deliver all instruments and documents (including, without limitation, the execution of the DIP Loan Agreement) and to pay all amounts which may be required or necessary for the Debtor's performance under the terms of this Order, the DIP Loan Agreement and the interim financing hereby approved.

10. All of the Debtor's post-petition obligations to SouthTrust for indebtedness arising in respect of this interim approval of the DIP Loan Agreement are hereby authorized and granted superpriority administrative expense status, in accordance with 11 U.S.C. § 364(c)(1), over any and all administrative expenses of the Debtor, whether heretofore or hereafter incurred, of the kind specified in 11 U.S.C. §§ 105, 326, 328, 503(b), 506(c), 507(a), 507(b) or 726. No other claim, having a priority senior or pari passu to that granted to SouthTrust in this Order shall be granted while any obligation under the DIP Loan Agreement remains outstanding.

11. Liens and security interests granted hereunder to SouthTrust in accordance with the DIP Loan Agreement shall not be subordinated to or pari passu with any other lien or security interest under 11 U.S.C. § 364(d) or otherwise.

12. (a) The liens and security interests in favor of the SouthTrust as described

herein and in the DIP Loan Agreement shall be deemed valid, binding, enforceable and perfected upon entry of this Order;

(b) SouthTrust shall not be required to file any financing statements, notice of lien or similar instruments in any jurisdiction or filing office, or to take possession of any assets, or to take any other action in order to validate or perfect the liens and security interests granted by or pursuant to this Order or pursuant to the DIP Loan Agreement;

(c) Should SouthTrust, in its sole discretion, from time to time, choose to file such financing statements, notices of lien or similar instruments, take possession of any collateral securing the indebtedness hereby authorized, or take any other action to validate or perfect any such security interest or lien, all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order; and

(d) A certified photocopy of this Order may, in the discretion of SouthTrust, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, notices of lien or similar instruments, and all filing offices are hereby directed to accept such certified copy of this Order for filing and recording.

13. The automatic stay provided under Section 362(d) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate the provisions of the DIP Loan Agreement. In particular, SouthTrust is permitted to receive and apply the payments made by the Debtor, in accordance with the terms and provisions of the DIP Loan Agreement. Further, SouthTrust is permitted to exercise all of its contractual, legal and equitable rights in and to the Pre-petition Collateral, without further order or notice, in the event that (a) SouthTrust files a duly executed affidavit with the Court attesting to the occurrence of an Event of Default under (and as defined in) the DIP Loan Agreement and serves a copy of such filing and affidavit on the Debtor, its

counsel, and such others as are entitled to notice under existing orders of the Court, by hand delivery or facsimile, and (b) the Debtor fails to file with the Court, within five (5) business days of SouthTrust's filing of its affidavit, an affidavit refuting that an Event of Default has occurred under the DIP Loan Agreement. If the Debtor does file an affidavit refuting that an Event of Default has occurred under the DIP Loan Agreement, the Debtor shall serve a copy of such filing and affidavit on SouthTrust, its counsel, and such others as are entitled to notice under existing orders of the Court, by hand delivery or facsimile.

14. The provisions of this Order shall be binding upon and inure to the benefit of the SouthTrust and the Debtor and their respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter appointed for the Debtor or with respect to the Debtor's property).

15. The Debtor shall, within two (2) business days of the entry of the Order, mail copies of this Order to (a) its twenty (20) largest unsecured creditors, (b) the parties on the Debtor's proposed Service List, (c) any other party which has as of the date hereof, filed with the Clerk of the Court and served upon counsel for the Debtor a request for notices in this case; and (d) a committee of unsecured creditors, and its counsel, if appointed. Any other further obligation for notice of the relief granted herein be, and hereby is, dispensed with and waived.

16. The provisions of this Order shall be immediately effective upon entry of this Order by the Court and any actions taken pursuant hereto shall survive entry of and shall govern with respect to any conflict with, any Order which may be entered confirming any plan of reorganization or which may be entered converting this case. The terms and provisions of this Order, as well as the priority of SouthTrust's claims, and all rights of SouthTrust and obligations of the Debtor created or arising pursuant hereto or the DIP Loan Agreement, shall continue in the

Debtor's Chapter 11 case and in any superseding case under the Bankruptcy Code, and such claims, lien and security interest shall maintain their priority as provided by the Order until satisfied and discharged in accordance with the terms of the DIP Loan Agreement.

17. Consistent with 11 U.S.C. § 364(e), if any or all of the provisions of this Order are hereafter modified, vacated or stayed; such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability, security interest or lien granted or incurred by the Debtor to SouthTrust prior to the effective date of such stay, modification or vacation, or the validity and enforceability of any security interest, lien, priority or right authorized or created hereby pursuant to the documents; and any indebtedness, obligation or liability incurred by the Debtor to SouthTrust prior to the effective date of such stay, modification or vacation shall be governed in all respects by the provisions of this Order, and SouthTrust shall be entitled to all the rights, remedies privileges and benefits, including the priority, security interest and lien granted herein and pursuant to the DIP Loan Agreement, with respect to any such indebtedness, obligation or liability. All advances under the DIP Loan Agreement are made in reliance upon this Order, and, therefore, the indebtedness evidenced by such advances prior to the effective date of any stay, modification or vacation of this Order cannot (i) be subordinated, (ii) lose its superpriority claim status, or (iii) be deprived of the benefit of the status of the lien granted to SouthTrust under this Order or the DIP Loan Agreement, as a result of any subsequent order in the Debtor's case, or any superceding case.

18. To the extent any of the terms and conditions of the DIP Loan Agreement are in conflict with the terms and conditions of this Order, the provisions and intent of the DIP Loan Agreement shall control.

19. The final hearing on this Motion, pursuant to Bankruptcy Rule 4001, shall be held

on MAY 1st, 2002 at 9:00 A.m. in Courtroom 4, United States Bankruptcy Court for the Northern District of Alabama, United States Courthouse, Birmingham, Alabama.

20. Service of this Order and the Motion by the Debtor upon the parties identified in paragraph 15 above on or before APRIL 9th, 2002, shall constitute good and sufficient notice of the final hearing on the Motion.

21. Objections, if any, to the relief sought in the Motion shall be in writing, shall set forth with the particularity the grounds for such objections or other statement of position, shall be filed with the Clerk of the Bankruptcy Court, and served upon (a) counsel for the Debtor, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007, Attention: Roger Frankel and Richard H. Wyron, and Lange Simpson Robinson & Somerville, LLP, 2100 3rd Avenue, North, Suite 1100, Birmingham, AL 35203, Attention: Richard P. Carmody, and (b) counsel for SouthTrust and the other parties on the Service List proposed by the Debtor, so that they are actually received by such parties on or before 4:30, P.m., Central Time, on APRIL 26th, 2002.

22. The Clerk of Court is hereby directed to forthwith enter this order on the docket of this Court maintained with regard to this case.

Dated: April 9th, 2002


UNITED STATES BANKRUPTCY JUDGE

**AGREEMENT REGARDING USE OF
CASH COLLATERAL AND DIP FINANCING**

THIS AGREEMENT REGARDING USE OF CASH COLLATERAL AND DIP FINANCING (this “**Agreement**”) is made and executed this ____ day of April, 2002 by and between Shook & Fletcher Insulation Co., a Delaware corporation (the “**Borrower**”), and SouthTrust Bank, an Alabama banking corporation (the “**Bank**”).

R E C I T A L S

WHEREAS, on or about April 8, 2002 (the “**Filing Date**”), the Borrower filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division (the “**Bankruptcy Court**”); and

WHEREAS, on or about March 22, 2001, the Bank and the Borrower executed that certain Revolving Note dated March 22, 2001 , as amended February 7, 2002, in the principal amount of \$3,000,000 (the “**Revolving Note**”); and

WHEREAS, as security for the Revolving Note, the Borrower executed and delivered to the Bank that certain Loan and Security Agreement dated March 22, 2001 and amended on February 7, 2002 (as amended, the “**Loan and Security Agreement**”, and together with all promissory notes, instruments, security agreements, guaranties, pledge agreements and other related documents, collectively the “**Loan Documents**”); and

WHEREAS, pursuant to the Loan Documents, the Revolving Note is secured by properly perfected, first priority liens on certain property of the Borrower defined in the Loan and Security Agreement as the “**Collateral**”, which includes, without limitation, (a) all accounts, notes, bills, acceptances, chattel paper, instruments, contract rights, and all proceeds

thereof; (b) all inventory; (c) all proceeds of goods and intangibles constituting Collateral; and
(d) all books and records relating to the Collateral; and

WHEREAS, as of the Filing Date, the total indebtedness due under the Revolving Note was approximately \$2.6 million; and

WHEREAS, the Bank has first priority, properly perfected security interests in the Collateral; and

WHEREAS, the Bank was a fully secured creditor of the Borrower on the Filing Date and at all times during the ninety (90) day period preceding the Filing Date; and

WHEREAS, during the pendency of the Borrower's bankruptcy case, the Borrower has requested and the Bank has agreed pursuant to this Agreement (a) to permit the Borrower to use the Collateral, including cash collateral as that term is used within the meaning of Section 363 of the Bankruptcy Code (the "**Cash Collateral**") and (b) to provide the Borrower with post-petition financing by continuing in place on a post-petition basis the financing arrangement that existed prior to the Filing Date under the Loan Documents (the "**DIP Financing**"); and

WHEREAS, the Borrower and the Bank have entered into this Agreement to permit the Borrower to use the Collateral and the Cash Collateral after the Filing Date and to provide for the DIP Financing to the Borrower.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the covenants contained hereinafter and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Bank hereby agree as follows:

1. **Recitals.** The Borrower and the Bank agree that the above recitals are true and accurate and by execution of this Agreement each party acknowledges the truth, accuracy and binding effect of the representations and statements contained therein.

2. **Operation of Borrower's Business.** The Borrower shall continue to operate its business in the ordinary and usual course.

3. **Confirmation of Loan Documents; DIP Financing.** The Borrower acknowledges, agrees and affirms that, as of April 8, 2002: (i) there is due and owing to the Bank under the Revolving Note, without defense, offset, counterclaim or claim of any kind, the principal sum of \$2,405,800.00, together with all accrued interest thereon; and (ii) the foregoing indebtedness and all obligations under the Loan Documents are valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms and the Borrower hereby ratifies and reconfirms its obligations thereunder, including its obligation to make to the Bank all payments as they become due under the Revolving Note with such payments to be made in accordance with the terms of the Loan Documents. The Bank further agrees to continue to provide advances to the Borrower under the Loan Documents and the terms of this Agreement as DIP Financing, and all amounts advanced in respect of the DIP Financing shall be governed by and payable by the Borrower in accordance with the terms of the Loan Documents, as modified by this Agreement and an order of the Bankruptcy Court approving this Agreement and the DIP Financing provided for herein.

4. **Replacement Liens; Acknowledgement.** As additional collateral for the Borrower's obligations under the Loan Documents (including the Borrower's obligations in respect of the DIP Financing and this Agreement) and as adequate protection for the use of cash collateral, the Borrower hereby grants to the Bank a continuing first priority security interest and

replacement lien in and to the Collateral and Cash Collateral arising or acquired on or after the Filing Date, and all proceeds thereof. As additional security for the Borrower's obligations under the Loan Documents (including the Borrower's obligations in respect of the DIP Financing and this Agreement), the Borrower agrees that the claim of the Bank in respect of the DIP Financing and the use of the Cash Collateral shall be afforded the status granted by Section 364(c)(1) of the Bankruptcy Code. The Bank hereby acknowledges that the Borrower has subordinate financing outstanding to Shook & Fletcher Supply Co. of Alabama, Inc., a Delaware corporation, pursuant to the Loan and Security Agreement dated December 17, 2001, as amended, and the Agreement Regarding Use of Cash Collateral and Subordinated DIP Financing dated April __, 2002.

5. **Accrual of Interest.** During the term of this Agreement, and subject to there occurring no Events of Default under this Agreement and the Loan Documents, interest on all amounts outstanding under the Revolving Note and the DIP Loan Agreement shall be calculated at the non-default rates specified in the Loan Documents.

6. **Inspection of Collateral.** The Bank shall be permitted access to the Borrower's books and records for the purpose of inspection of the Collateral and Cash Collateral, upon two (2) business day's notice to the Borrower and its counsel.

7. **Reporting Requirements.** The Borrower shall simultaneously continue to satisfy all financial reporting requirements provided for in the Loan Documents.

8. **Service of Operating and Reports.** The Borrower shall deliver to the Bank copies of all monthly operating reports required to be made to the Bankruptcy Administrator for the Northern District of Alabama.

9. **Modification of Automatic Stay.** Upon executing this Agreement, subject to the approval of the Bankruptcy Court, the automatic stay provided under Section 362(d) of the Bankruptcy Code shall be modified to the extent necessary to effectuate the provisions of this Agreement, including, but not limited to, permitting the Bank to receive and apply the payments made by the Borrower in accordance with the terms and provisions of this Agreement.

Notwithstanding anything to the contrary herein, the automatic stay shall be modified to allow the Bank to exercise all of its contractual, legal and equitable rights in and to the Collateral and Cash Collateral, without further order or notice in the event that (a) the Bank files a duly executed affidavit with the Bankruptcy Court attesting to the occurrence of an Event of Default hereunder and serves a copy of such filing and affidavit on the Borrower, its counsel, and such others as are entitled to notice under existing orders of the Bankruptcy Court, by hand delivery or facsimile and (b) the Borrower fails to file, within five (5) business days of the Bank's filing of its affidavit, an affidavit of the Borrower with the Bankruptcy Court refuting that an Event of Default had occurred under this Agreement. If the Borrower does file an affidavit refuting that an Event of Default has occurred under this Agreement, the Borrower shall serve a copy of such filing and affidavit on the Bank, its counsel, and such others as are entitled to notice under existing orders of the Bankruptcy Court, by hand delivery or facsimile and the parties shall request that the Bankruptcy Court hold a prompt hearing on the Bank's request for relief from the automatic stay.

10. **No Waiver of Rights.** Except as otherwise provided in paragraph 5 and in the proviso to this sentence, the Borrower and the Bank agree that nothing contained herein or any actions authorized to be taken by the Bank pursuant to the terms of this Agreement shall be or constitute a waiver, release or relinquishment of any of the Bank's rights or interests in the

Collateral including, without limitation its right to the Cash Collateral, or under the Loan Documents; provided however, that the Bank hereby forever waives any default or event of default under the Loan Documents or under the DIP Financing made pursuant to this Agreement and the Loan Documents caused solely by the Borrower's filing of its voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court on the Filing Date (or the pendency of such case).

11. **Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement and the DIP Financing: (a) if a trustee is appointed in the Borrower's bankruptcy case, either under chapter 11 or chapter 7 of the Bankruptcy Code; (b) if there is a breach (whether continuing or not) of any financial covenant set forth in the Loan Documents; or (c) if there is a breach of any other term or condition of this Agreement or the underlying Loan Documents, as modified by this Agreement and an order of the Bankruptcy Court (other than defaults existing as of the Filing Date).

12. **Binding Effect.** This Agreement shall be binding upon Borrower as debtor -in-possession any subsequent appointed trustee, either under chapter 11 or chapter 7 of the Bankruptcy Code, and upon all other creditors of the estate who have or may hereinafter extend credit to the Borrower or its estate.

13. **Notices.** All notices required hereunder shall be given to the following parties as provided herein:

To Bank:	Robert Bowen SouthTrust Bank 112 North 20 th Street Birmingham, AL 35203
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With Copy To:	David S. Maxey, Esq. Spain & Gillon, LLC
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The Zinszer Building
2117 Second Avenue North
Birmingham, AL 35203

To Borrower: Wayne W. Killion, Jr.
Shook & Fletcher Insulation Co.
4625 Valleydale Road
Birmingham, AL 35238
Facsimile: 205-991-7745

With Copy To: Roger Frankel, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
Facsimile: 202-424-7645

14. **Release.** This Agreement does hereby constitute a full and complete release, waiver, discharge and relinquishment of any and all claims, rights, causes of action, demands or assertions that the Borrower has or may be entitled to assert against the Bank, as well as its insiders, affiliates, owners, predecessors, successors, assigns, employees, attorneys and/or agents, whether known or unknown, as of the date of this Agreement.

15. **Jurisdiction.** Notwithstanding any provision of the Loan Documents to the contrary, the Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of this Agreement in order to resolve any dispute in connection with the rights and duties specified hereunder.

16. **Full Force and Effect.** This Agreement is subject to the approval of the Bankruptcy Court. Except as modified herein and by an order of the Bankruptcy Court, the terms and provisions of the Loan Documents shall remain in full force and effect.

IN WITNESS WHEREOF, the Borrower and the Bank have executed this Agreement on
the day and year first written above.

Shook & Fletcher INSULATION CO., a Delaware
corporation, as debtor and debtor-in-possession

By: _____
Its: _____

SOUTHTRUST BANK
an Alabama banking corporation

By: _____
Its: _____